

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	CASE NO. 21-60255
)	
TEMPLAR COMPANIES, LLC)	ADV. PRO. NO. 21-6017
)	
Debtor)	JUDGE RUSS KENDIG
_____)	
)	
SCOTT C. SWEARINGEN)	
)	
Plaintiff)	
)	
vs.)	
)	
TEMPLAR COMPANIES, LLC)	
)	
Defendant)	

**MOTION TO DISMISS AMENDED COMPLAINT ASSERTING NON-
DISCHARGEABILITY OF CERTAIN DEBTS PURSUANT TO SECTIONS 727(a)(2)(A)
AND 727(a)(2)(B) OF THE BANKRUPTCY CODE**

Now comes Defendant, Templar Companies, LLC (the “Defendant”), by and through counsel, and moves pursuant to Fed.R.Civ.P. 12(b)(6), made applicable by the Bankruptcy Rule 7012(b), to dismiss the Amended Complaint filed by Plaintiff Scott C. Swearingen, with prejudice, for failure to state a claim upon which relief may be granted.

In support of its Motion to Dismiss, the Defendant files herewith a Memorandum of Law in Support of Motion to Dismiss.

WHEREFORE, the Defendant prays that the Court dismiss this adversary proceeding, award the Defendant its costs, and grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

Roderick Linton Belfance, LLP

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT
ASSERTING NON-DISCHARGEABILITY OF CERTAIN DEBTS PURSUANT TO
SECTIONS 727(a)(2)(A) AND 727(a)(2)(B) OF THE BANKRUPTCY CODE

1. On June 11, 2021 the Plaintiff Scott Swearingen filed his Adversary Proceeding Complaint. [ECF Doc. No. 1.]
2. On June 16, 2021 the Debtor, Templar Companies, LLC filed its Motion to Dismiss. [ECF Doc. No. 5.]
3. On June 21, 2021 Plaintiff filed both his response to the Motion to Dismiss [ECF Doc. No. 11] and an Amended Complaint [ECF Doc. No. 10].
4. Pursuant to Fed.R.Civ.P. 15(a)(1)(B), made applicable by Federal Rules of Bankruptcy Procedure Rule 7015, Plaintiff did not require leave of the Court to amend his Complaint because it was filed within 21 days after service of the Debtor's Rule 12(b) motion.
5. Because amended complaints supersede the original pleading, the filing of an amended complaint usually renders the pending motion to dismiss moot. *Yates v. Applied Performance Techs., Inc.*, 205 F.R.D. 497, 499 (S.D. Ohio 2002). "The general rule is that an amended pleading supersedes the original and remains in effect, unless again modified, from that point forward." 6 Wright, Federal Practice & Procedure § 1476, at 556-57 (2nd ed. 1990 & Supp. 2001). Once an amended pleading is filed, the original pleading no longer performs any function in the case. *Id.* Any subsequent motion filed by the opposing party should be directed at the amended pleading. *Id.* (citing *Hartman v. Register*, No. 1:06-cv-33, 2007 U.S. Dist. LEXIS 21175 (S.D. Ohio Mar. 26, 2007) (holding that defendants' motions to dismiss the original complaint and the first amended complaint were moot given the subsequent filing of a second amended complaint)); see also *Pethtel v. Washington County Sheriff's Office*, No. 2:06-799, 2007 U.S. Dist. LEXIS 60105, at *12-13 (S.D. Ohio Aug. 16, 2007) ("because an amended

complaint supersedes the original complaint, the filing of an amended complaint normally moots a motion to dismiss the original complaint").

6. The only circumstances in which filing an amended complaint may not moot a motion to dismiss is when the amended complaint is substantially identical to the original complaint.

Pethtel, 2007 U.S. Dist. LEXIS 60105, at *12-13. For example, when a motion to amend only addresses a discrete issue, it may not moot the underlying motion to dismiss. *In Re: GI Holdings*, 122 Fed. Appx. 554, 556 (3rd Cir. 2004).

7. The Plaintiff's Amended Complaint appears to be substantively identical to his original Complaint, and 11 U.S.C. § 727(a) remains clear that a discharge relates only to an individual debtor.

8. Because the Debtor is not an individual, no discharge is available to Debtor as a matter of law and the Complaint fails in its reliance on 11 U.S.C. § 727(a)(2). No such cause of action against the Debtor exists.

9. Instead of presenting a cognizable claim against the Debtor that is designed to be litigated through an adversary proceeding under Federal Rules of Bankruptcy Procedure Rule 7001, Plaintiff appears to be attempting to use the adversary proceeding process to harass the Debtor's owner Robert Norman and interfere with his fresh start in connection with the bankruptcy discharge that he received in U.S. Bankruptcy Court Northern District of Ohio Case No. 19-61286-rk.

10. The Debtor hereby incorporates and renews his Motion to Dismiss filed with this Court on June 16, 2021 (ECF Doc. No. 5) in its entirety in support of this Motion.

For each and all of the above-cited reasons, Defendant Templar Companies, LLC respectfully requests that this Court dismiss the Plaintiff's Amended Complaint, awarding costs

to the Defendant and such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

Roderick Linton Belfance, LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion has been sent via regular U.S. Mail this 24th day of June, 2021 via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

Office of the U.S. Trustee, served electronically

And by Regular U.S. Mail this 24th Day of June, 2021 to:

Scott C. Swearingen
1938 11th Street SW
Akron, OH 44314

/s/ STEVEN J. HEIMBERGER
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Attorney for Defendant, Templar Companies, LLC